

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT MULLENS,

Defendant.

CASE NO. 05-80722-04

DISTRICT JUDGE PATRICK J. DUGGAN

MAGISTRATE JUDGE DONALD A. SCHEER

ORDER

Defendant Robert Mullens' Motion for Government Agents and Law Enforcement Officers to Retain Rough Notes was referred to the undersigned magistrate judge for hearing and determination. The motion was set for hearing on August 22, 2006. The parties, however, have waived oral argument and requested that the matter be determined on their written submissions.

Having reviewed Defendant's Motion, together with the Government's Response, I find that the routine destruction of rough notes after the preparation of formal reports does not violate the Jencks Act, Title 18 United States Code, Section 3500, or the holding in Brady v. Maryland, 373 U.S. 83 (1963). See, United States v. Frederick, 583 F.2d 273, cert. denied, 444 U.S. 860 (1978); United States v. Simtob, 901 F.2d 799, 809 (9th Cir. 1990). Such rough notes are not Jencks material and Defendant has no discovery right to such documents. United States v. Hinton, 719 F.2d 711, 719-722 (4th Cir. 1983), cert. denied, 104 S.Ct. 1300 (1981); United States v. Hurst, 510 F.2d 1035, 1036 (6th Cir. 1975). It is therefore ordered that Defendant's Motion for Government Agents and Law Enforcement Officers to Retain Rough Notes is denied. Provided, however, that the

Government shall honor the commitment expressed in its motion response to ensure that, to the extent that investigators rough notes still exist, the Government will counsel its agents to retain them pending trial.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: August 23, 2006

CERTIFICATE OF SERVICE

I hereby certify on August 23, 2006 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on August 23, 2006. **None.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217